

## **FATCA Fallout: Multinational Banks Respond, Canada Enters Negotiations with Feds on FATCA Treatment, and IRS Head Gives Speech on Expected FATCA Regs**

December 22, 2011 by [Rosa Schechter](#)

*[This post is the fourth in a series discussing the Foreign Account Tax Compliance Act (FATCA) and its impact upon foreign investment and development in South Florida and the United States as well as efforts both locally and in other countries to stop FATCA.]*

As 2011 comes to an end and time ticks closer to the June 2013 effective date of the Foreign Account Tax Compliance Act (FATCA), more and more reaction across the globe is taking place. As discussed earlier, to implement the requirements of FATCA will cost banks an enormous amount of money -- and there are many foreign lenders that are not too happy at the prospect.

### ***Eight Billion Reasons Feds Like FATCA***

In a November 2011 *Reuters* piece covering FATCA as a forecasted financial tsunami, one U.S. legal expert opined during an Italian tax conference that [FATCA may cost the big multinational banks \\$100,000,000 EACH.](#)

Compare this against the [predicted \\$8+ billion in tax revenue that FATCA is expected to bring](#) into the coffers of the U.S. Department of Treasury, and we begin to see where the battleground really lies. The old adage of "show me the money" is often wise advice.

*It's going to be very hard to get FATCA repealed when it's promising so much revenue to a federal government dealing with a severe economic crisis. Additionally, Congress passed this law as a means of catching alleged tax evaders (whether or not it will actually hurt or halt tax evasion is another issue), so FATCA brings with it a righteous rationale that also weakens the likelihood of repeal.*

### ***Other Countries Are Fighting FATCA***

As discussed earlier in this series, other countries are shocked and stymied by FATCA because not only does the new law clash with their privacy laws in some instances, but many see FATCA as the United States trying to turn independent jurisdictions into deputized IRS collection agents, and many nations find this insulting. They see this as the worst kind of US economic imperialism at work.

*These nations are not sitting still.* They are taking action now, and not betting on a repeal. [China is reported to be planning on ignoring or avoiding FATCA, flat out.](#) [European banks are turning away Americans as customers rather than deal with FATCA.](#) **Canada,** meanwhile, has been negotiating with federal representatives on FATCA's impact.

Earlier this month, Jim Flaherty (Canada's Finance Minister) spoke to reporters to say that [the Treasury Department was working with his office on ways to make FATCA easier on Canada's banks](#). Flaherty's explanation? Canada is not a place where U.S. tax evaders are known to find safe harbor. Since FATCA is aimed at collected hidden tax dollars overseas, Canada is arguing that its banks shouldn't be forced into spending a lot of money to institute compliance (aka collection) procedures that don't jive with FATCA in the first place.

## ***IRS Commissioner Discusses FATCA Impact Before International Tax Institute***

On December 15, 2011, the Commissioner of the IRS gave a speech at the IRS/George Washington University 24th Annual Institute on Current Issues in International Taxation, ([You can read the full text of his speech online here.](#)) It doesn't sound like the IRS thinks that FATCA's days are numbered - Commissioner Shulman definitely sounds like he's with those that think FATCA is a done deal.

Here are some highlights from Commissioner Shulman's speech (all are quotes from his 12/15/11 speech):

- Our approach to offshore tax evasion follows a natural course...cleaning up the abuses of the past and then mining and leveraging the data we receive to mount a greater attack on the abuse.
- Indeed, I framed the new disclosure initiative as the best chance for people to get back into the system... back into compliance... so they properly report and pay their taxes for years to come.
- Today, banks are much less willing to facilitate offshore evasion than they were in the past and advisors are asking more questions of their clients regarding offshore accounts. Indeed, individuals now find it more difficult to find an advisor who would suggest such a risky approach and a bank that would accept the money under secrecy conditions.
- I think it's fair to say that we are well on our way to deterring the next generation of taxpayers from using hidden bank accounts to cheat on their taxes. Through our ongoing efforts, we are demonstrating that the world has become a smaller place... that we will eventually find you if you are hiding assets overseas.
- Combating international tax evasion is also a coordinated global effort on multiple fronts, including new international tax information agreements and increased collaboration with other governments and tax authorities.
- Congress wrote and passed FATCA to give us tools to combat offshore tax evasion. Since the law was passed, we have put out three pieces of guidance laying out a practical framework and timeline for implementation, such as phasing in the statute's requirements.

- I have also directly engaged executives from banks and financial institutions around the globe, as have my colleagues at the Treasury Department and IRS. We have listened to their major concerns that generally fall into two categories. First, is the conflict between FATCA and other countries' laws. Second, is the difficulty in implementing and administering the withholding requirements for pass-through payments and the potential burden they place on foreign financial institutions.
- We have taken these conversations very seriously and you can expect new proposed regulations from us soon after the new year that take into account the implementation concerns we have heard. One goal of these regulations is to address these concerns and provide a way forward to allow responsible corporate citizens to work through these tricky issues in a practical fashion.
- To this end, we are shifting our approach to be more strategic, and to view taxpayers through the prism of their business objectives and tax planning strategies. This is a real change.
- We traditionally viewed and pursued international issues through the lens of individual code sections. But this occluded our view of the larger, more meaningful picture. We were only getting a slice of it... and that needs to change.
- For example, when a U.S. corporation shifts income to a low-tax jurisdiction, we need to look at the entire structure that was created to accomplish this. We need to understand the overall planning paradigm... What's motivating the company...What are the benefits...What are the most aggressive positions...How are they managing tax exposure...In other words, we have to understand what they are trying to accomplish.
- So, we are shifting our approach to be more strategic and to view taxpayers through their business objectives and tax planning strategies. The end game is to try to develop a way of organizing our international compliance programs to:
  - Identify the highest compliance risks among our taxpayer base;
  - Work cases as effectively and efficiently as possible;
  - Not waste our and taxpayers' time on issues that do not pose compliance risk; and
  - Find appropriate ways to resolve cases as soon as possible.
  - Allocation of resources will also follow more closely the way in which taxpayers plan and adopt tax positions. In other words, the strategy mirrors the tax planning paradigm.
- The world of international tax is very dynamic: from our efforts to combat offshore tax evasion by individuals, to deeper coordination of action by sovereign governments, to our evolving strategy to work with the largest corporate taxpayers. Each strategy will depend on us continuing to innovate ... continuing to have dialogue outside of our agency...and continuing to always strive to work smarter. We are very focused on continuing to up our game in administering the tax laws in a global environment, and

you can expect to see the same intensity of efforts in the years to come that you have seen in the past several years.

***What does this mean for Florida land development and Florida real estate investment?***

Well, particularly here in Miami, we are a cosmopolitan culture with longstanding ties - both business and personal - to countries all over the world. Florida's economy is in serious trouble, and lots of people are working hard to build upon our global ties to bring foreign investment into the Sunshine State.

We need to be building that cross-pollination between Florida and Brazil, Mexico, Israel, Canada, and beyond. Asking that these folk come here to invest and build while at the same time, asking their banks to spend millions in an effort for the United States to collect tax dollars -- well, in its simplest terms, it's not very hospitable, is it?

Financially, it's much more complex than that, of course. But that is for another post on another day.